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# **Consumer Pro Se Debtor Guide**

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## **United States Bankruptcy Court Middle District of Alabama**

**Frank M. Johnson, Jr. Federal Building  
One Church Street, Ground Floor  
Montgomery, AL**



**The mission of the Bankruptcy Clerk's Office for the Middle District of Alabama is  
to provide the highest quality service to the judges, bar, litigants, and public**

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## PREFACE

Bankruptcy can be complicated. The staff of the Bankruptcy Court provides a variety of services. However, we cannot provide legal advice, nor are we permitted to assist pro se debtors with the preparation of the voluntary petition, schedules, or other documents. Pro Se debtors are required to file the same basic set of forms, whether filing a chapter 7, 11, 12, or 13 case. Filing under chapter 11 or 12 is very uncommon for debtors to file petitions under these chapters as pro se. Additionally, because corporations and partnerships are required to have an attorney to represent them, these entities may not file petitions' pro se .

**We recommend that you be familiar with Bankruptcy Code [Section 521](#) of the Federal Rules of Bankruptcy Procedure (Debtor's Duties and Benefits).**

## NOTICE TO INDIVIDUAL CONSUMER DEBTOR

In accordance with § 342(b) of the Bankruptcy Code, this notice: (1) Describes briefly the services available from credit counseling services; (2) Describes briefly the purposes, benefits and costs of the four types of bankruptcy proceedings you may commence; and (3) Informs you about bankruptcy crimes and notifies you that the Attorney General may examine all information you supply in connection with a bankruptcy case. You are cautioned that bankruptcy law is complicated and not easily described. Thus, you may wish to seek the advice of an attorney to learn of your rights and responsibilities should you decide to file a petition. **Court employees cannot give you legal advice.**

### 1. Services Available from Credit Counseling Agencies

**With limited exceptions, § 109(h) of the Bankruptcy Code requires that all individual debtors who file for bankruptcy relief on or after October 17, 2005, receive a briefing that outlines the available opportunities for credit counseling and provides assistance in performing a budget analysis.** The briefing must be given within 180 days **before** the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted by telephone or on the Internet) and must be provided by a nonprofit budget and credit counseling agency approved by the Bankruptcy Administrator. The clerk of the bankruptcy court has a list that you may consult of the approved budget and credit counseling agencies.

**In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge.** The clerk also has a list of approved financial management instructional courses.

### 2. The Four Chapters of the Bankruptcy Code Available to Individual Consumer Debtors

#### **Chapter 7: Liquidation (Total fee \$274)**

1. Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer debts are subject to a “means test” designed to determine whether the case should be permitted to proceed under chapter 7. If your income is greater than the median income for your state of residence and family size, in some cases, creditors have the right to file a motion requesting that the court dismiss your case under § 707(b) of the Code. It is up to the court to decide whether the case should be dismissed.

2. Under chapter 7, you may claim certain of your property as exempt under governing law. A trustee may have the right to take possession of and sell the remaining property that is not exempt and use the sale proceeds to pay your creditors.

3. The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. If, however, you are found to have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge and, if it does, the purpose for which you filed the bankruptcy petition will be defeated.

4. Even if you receive a general discharge, some particular debts are not discharged under the law. Therefore, you may still be responsible for most taxes and student loans; debts incurred to pay nondischargeable taxes; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; certain debts which are not properly listed in your bankruptcy papers; and debts for death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs. Also, if a creditor can prove that a debt arose from fraud, breach of fiduciary duty, or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

### **Chapter 13: Adjustment of Debts of an Individual with Regular Income (Total Fee \$189)**

1. Chapter 13 is designed for individuals with regular income who would like to pay all or part of their debts in installments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

2. Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. The period allowed by the court to repay your debts may be three years or five years, depending upon your income and other factors. The court must approve your plan before it can take effect.

3. After completing the payments under your plan, your debts are generally discharged except for domestic support obligations; most student loans; certain taxes; most criminal fines and restitution obligations; certain debts which are not properly listed in your bankruptcy papers; certain debts for acts that caused death or personal injury; and certain long term secured obligations.

### **Chapter 11: Reorganization (\$1000 filing fee, \$39 administrative fee: Total fee \$1039)**

Chapter 11 is designed for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision by an individual to file a chapter 11 petition should be reviewed with an attorney.

### **Chapter 12: Family Farmer or Fisherman (\$200 filing fee, \$39 administrative fee: Total fee \$239)**

Chapter 12 is designed to permit family farmers and fishermen to repay their debts over a period of time from future earnings and is similar to chapter 13. The eligibility requirements are restrictive, limiting its use to those whose income arises primarily from a family-owned farm or commercial fishing operation.

### **3. Bankruptcy Crimes and Availability of Bankruptcy Papers to Law Enforcement Officials**

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

**WARNING:** Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information regarding your creditors, assets, liabilities, income, expenses and general financial condition. Your bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

# STATEMENT OF INFORMATION REQUIRED BY 11 U.S.C. §341

## **Introduction**

Pursuant to Section 341 of the Bankruptcy Code, the Office of the United States Bankruptcy Administrator has prepared this information sheet to help you understand some of the possible consequences of filing a bankruptcy petition under chapter 7 of the Bankruptcy Code. This information is intended to make you aware of -

- (1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;
- (2) the effect of receiving a discharge of debts in bankruptcy;
- (3) the effect of reaffirming a debt; and
- (4) your ability to file a petition under a different chapter of the Bankruptcy Code.

There are many other provisions of the Bankruptcy Code that may affect your situation. This statement contains only general principles of law and is not a substitute for legal advice. If you have any questions or need further information as to how the bankruptcy laws apply to your specific case, you should consult with an attorney.

## **What Is a Discharge?**

The filing of a chapter 7 petition is designed to result in a discharge of most of the debts you listed in your bankruptcy schedules. A discharge is a court order that says that you do not have to repay your debts, but there are a number of exceptions. Debts which usually may not be discharged in your chapter 7 case include, for example, most taxes, child support, alimony, and student loans; court-ordered fines and restitution; debts obtained through fraud or deception; debts which were not listed in your bankruptcy schedules; and personal injury debts caused by driving while intoxicated or taking drugs. Your discharge may be denied entirely if you, for example, destroy or conceal property; destroy, conceal or falsify records; or make a false oath. Creditors cannot ask you to repay debts which have been discharged. You can only receive a chapter 7 discharge once every eight (8) years.

## **What Are the Potential Effects of a Discharge?**

The fact that you filed bankruptcy can appear on your credit report for as long as 10 years. Thus, filing a bankruptcy petition may affect your ability to obtain credit in the future. Also, you may not be excused from repaying debts that were not listed on your bankruptcy schedules or that you incurred after you filed bankruptcy. There are exceptions to this general statement. Please seek the counsel of an attorney if you have any questions.

## **What Are the Effects of Reaffirming a Debt?**

After you file your bankruptcy petition, a creditor may ask you to reaffirm a certain debt or you may seek to do so on your own. Reaffirming a debt means that you sign and file with the court a legally enforceable document which states that you promise to repay all or a portion of the debt that may otherwise have been discharged in your bankruptcy case. Reaffirmation agreements must generally be filed with the court within sixty (60) days after the first meeting of creditors.

\_\_\_\_ Reaffirmation agreements are strictly voluntary. They are not required by the Bankruptcy Code or other state or federal law. You can voluntarily repay any debt instead of signing a reaffirmation agreement, but there may be valid reasons for wanting to reaffirm a particular debt. This is particularly true when property that you wish to retain is collateral for a debt.

Reaffirmation agreements must not impose an undue burden on you or your dependents and must be in your best interest. If you decide to sign a reaffirmation agreement, you may cancel it at any time before the court issues

an order of discharge or within sixty (60) days after you filed the reaffirmation agreement with the court, whichever is later.

If you reaffirm a debt and fail to make the payments as required in the reaffirmation agreement, the creditor can take action against you to recover any property that was given as security for the loan and you may remain personally liable for any deficiency. In addition, creditors may seek other remedies, such as garnishment of wages.

### **Other Bankruptcy Options**

You have a choice in deciding what chapter of the Bankruptcy Code will best suit your needs. Even if you have already filed for relief under chapter 7, you may be eligible to convert your case to a different chapter.

Chapter 7 is the liquidation chapter of the Bankruptcy Code. Under chapter 7, a trustee is appointed to collect and sell, if economically feasible, all property you own that is not exempt from these actions.

Chapter 13 generally permits individuals to keep their property by repaying creditors out of their future income. Each chapter 13 debtor files a plan which must be approved by the bankruptcy court. The debtors must pay the chapter 13 trustee the amount set forth in their plan. Debtors receive a discharge after they complete their chapter 13 repayment plan. Chapter 13 is only available to individuals with regular income whose debts do not exceed \$1,300,650 (\$307,675 in unsecured debts and \$922,975 in secured debts).

Chapter 11 is the reorganization chapter most commonly used by businesses, but is also available to individuals. Creditors vote on whether to accept or reject a plan, which also must be approved by the court. While the debtor normally remains in control of the assets, the court can order the appointment of a trustee to take possession and control of the business.

Chapter 12 offers bankruptcy relief to those who qualify as family farms. Family farmers must propose a plan to repay their creditors over a three to five year period and it must be approved by the court. Plan payments are made through a chapter 12 trustee, who also monitors the debtors' farming operations during the pendency of the plan.

**AGAIN, PLEASE SEEK THE ADVICE OF AN ATTORNEY IF YOU NEED FURTHER INFORMATION OR EXPLANATION, INCLUDING HOW THE BANKRUPTCY LAWS RELATE TO YOUR SPECIFIC CASE.**



## FILING REQUIREMENTS IN THE MIDDLE DISTRICT OF ALABAMA

### Items Required to Commence a Bankruptcy Case

1. **Voluntary Petition** - [Form B1](#)
  - a. Certification Concerning Debt Counseling by Individual/Joint Debtor(s) - (page 2 of petition)
  - b. Statement by a Debtor Who Resides as a Tenant of Residential Property - (page 2 of petition) - This section of the petition must be completed by a debtor whose landlord has a judgment for possession of the debtor's residence.<sup>1</sup>
2. **Filing Fee** - The clerk's office can provide you with an updated [Fee Schedule](#). As of October 17, 2005, the following fees applied to commence a bankruptcy case:

Chapter 7	\$274.00	Chapter 11	\$1,039.00
Chapter 13	\$189.00	Chapter 12	\$ 239.00

  - a. **Application to Pay Filing Fee in Installments (Optional)** - [Form B3A](#)
    - i. Use this form if you are unable to pay the full fee at the time of filing. A minimum fee of \$50 must be collected upon initial filing of petition. The remaining fee must be paid in no more than three installments within 120 days of the filing of the case.
    - ii. It is not necessary to submit an order (page 2 of Form 3A) with the application.
  - b. **Application for Waiver of Chapter 7 Filing Fee (Optional)** - [Form B3B](#)
    - i. If you cannot afford to pay the fee either in full at the time of filing or in installments, then you may request a waiver of the filing fee by completing this application. A judge will decide whether you have to pay the fee. By law, the judge may waive the fee only if your income is less than 150 percent of the official poverty line applicable to your family size and you are unable to pay the fee in installments.
    - ii. The filing fee may only be waived in Chapter 7 cases.
3. **List of Creditors (Mailing Matrix)** - Mailing list of creditors with names and address. The list should be submitted on a 3.5" diskette or compact disc in text format (.txt). See Requirements for Mailing Addresses for complete instructions.
  - a. If a debtor is unable to access the computer equipment or software necessary to produce a creditor list on a disk or cd, a creditor list created on paper and in substantial compliance with the Requirements for Mailing Addresses may be submitted for scanning by the clerk's office.
4. **Notice to Individual Consumer Debtor** - [Form B201](#).
5. **Statement of Social Security Number** - [Form B21](#).
6. **Certificate of Budget and Credit Counseling Course** - Must be filed with petition or within 48 hours. The clerk's office can provide you with a list of [approved budget and credit counseling providers](#).
  - a. If credit counseling has not been obtained prior to filing, an automatic 30-day extension of time to obtain such counseling will be granted if a certificate of exigent circumstances is filed with the petition. The certificate should 1) describe exigent circumstances that merit waiver of the § 109(h)(1) credit counseling requirements and 2) state that the debtor requested counseling from an approved

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<sup>1</sup> A deposit with the court of any rent becoming due within 30 days of the filing of the petition may be required to stay eviction efforts.

agency, but was unable to obtain services “...during the 5-day period beginning on the date on which the debtor made the request”.

- i. The debtor may also motion the court for an additional extension up to 15 days. §109(h)(3).
- b. Per §109(h)(4), an individual debtor may also motion the court for a complete exemption due to incapacity, disability, or active military duty in a military combat zone. § 109(h)(4).

### **Items Required at Commencement or Within 15 Days After the Initial Filing:**

1. **Summary of Schedules** - [Form B6](#)
2. **Declaration Concerning Debtor’s Schedules** - [Form 6 \(Decl.\)](#)
3. **Schedules:**

Schedule A: Real Property - <a href="#">Form B6A</a>	Schedule F: Unsecured Claims - <a href="#">Form B6F</a>
Schedule B: Personal Property - <a href="#">Form B6B</a>	Schedule G: Executory Contracts/Unexpired Leases - <a href="#">Form B6G</a>
Schedule C: Exemptions - <a href="#">Form B6C</a>	Schedule H: Codebtors - <a href="#">Form B6H</a>
Schedule D: Secured Claims - <a href="#">Form B6D</a>	Schedule I: Current Income - <a href="#">Form B6I</a>
Schedule E: Priority Claims - <a href="#">Form B6E</a>	Schedule J: Current Expenditures - <a href="#">Form B6J</a>
4. **Statement of Financial Affairs** - [Form B7](#)
5. **Payment Advices** - Copies of payment advices or other evidence of payment received by the debtor from any employer within 60 days before filing pursuant to §521(a) .
  - a. Social Security numbers and account numbers should be redacted (hidden).
  - b. For instances in which payment advices required to be filed are not available, an affidavit indicating the reason why such documents are unavailable should be filed in lieu of payment records. To meet this requirement use local form [Statement Under Penalty Concerning Payment Advices](#).
6. **Chapter 13 Plan** - [Local Form 3](#)
  - \* Only required in Chapter 13 cases.
6. **Statement of Current Monthly Income and Means Test Calculation**
  - a. Chapter 7 - [Form B22A](#)
  - b. Chapter 13 - [Form B22C](#)
  - c. Chapter 11 - [Form B22B](#)

### **Other Required Forms and Deadlines**

1. **Chapter 7 Individual Debtor's Statement of Intention** - [Form B8](#)
  - a. Only required in Chapter 7 cases.
  - b. Must be filed within 30 days after the initial filing and served on all creditors listed, the case trustee.
  - c. A copy of the statement of intention must be served (mailed) on the trustee and the creditors named in the statement on or before the filing of the statement. Fed. R. Bankr. P. 1007(b)(2). Thus, a certificate of service should be attached to the statement of intention.

2. **Certificate of Completion of Personal Financial Management Course** - In order to receive a discharge in an individual Ch. 7 or Ch. 13 case, the debtor(s) must complete a personal financial management course. The clerk's office can provide you with a list of [approved providers of personal financial management instructional courses](#).
- Chapter 7 - A certificate indicating completion of an approved financial management course is due within 45 days after the §341 meeting of creditors.
  - Chapter 13 - A certificate indicating completion of an approved financial management course is due no later than the last payment made by the debtor as required by the plan or the filing of a motion for entry of a discharge under § 1328(b) in a chapter 13 case.

## FREQUENTLY ASKED QUESTIONS

- **Do I need an attorney to file bankruptcy?**

While it is possible to file a bankruptcy case 'pro se,' that is, without the assistance of an attorney, it is extremely difficult to do so successfully. Hiring a competent attorney is highly recommended..

- **What is a Automatic Stay?**

The filing of a petition 'automatically stays' (stops) most actions against the debtor or the debtor's property.

- **What is an ex parte matter and how do I file it?**

An ex parte matter is a hearing or order granted on the request of and for the benefit of one party only. This is an exception to the basic rule of court procedure that both parties must be present at any argument before a judge, and to the otherwise strict rule that an attorney may not notify a judge without previously notifying the opposition. Ex parte matters are usually temporary orders (like a restraining order) pending a formal hearing or an emergency request for a continuance. An attempt should still be made to contact the other party's lawyer of the time and place of any ex parte hearing.

- **How do I get certified copies?**

Send a written request along with the case number, filing date and title of the documents which you wish to have certified. In addition, please include your name and a daytime phone number so that we may contact you in regards to payment.

- **If I file for bankruptcy, will it stop an eviction?**

The Clerk's Office is prohibited by federal statute from providing legal advice. While there is no precise definition of legal advice, at a minimum it includes (1) acting on a person's behalf in presenting a claim or defense to a court, and (2) advising a person on the merits of a claim or defense and the state of the law applicable to it. Clerk's Office staff, therefore, will **not** provide information relating to:

- \* The application of laws and rules to individual claims or defenses;
- \* Whether jurisdiction is proper in a particular court;
- \* Whether a complaint properly presents a claim;
- \* What the "best" procedures are to accomplish a particular objective;
- \* The interpretation of case law;
- \* Explain the result of taking or not taking action in a case;
- \* Explain who should receive proper notice or service.

- **May I speak directly with a bankruptcy judge?**

No. Federal law prohibits any contact with the Judge outside the Courtroom in order to preserve the impartiality of the Court and to prevent the appearance of any impropriety or allegations of preferential treatment of any party.

- **How do I obtain bankruptcy forms?**

You can obtain bankruptcy petition forms from any legal stationery store or law libraries. Bankruptcy petition and other official forms can also be downloaded from the court's website. ([www.almb.uscourts.gov](http://www.almb.uscourts.gov))

- **What are the consequences of filing for bankruptcy?**

Depending on a debtor's financial situation and reasons for filing, the consequences of filing for bankruptcy protection may outweigh the benefits. Those considering bankruptcy should be aware of the following:

- \* Filing for bankruptcy protection is not free.

- \* Not all debts are dischargeable.

Example: Secured creditors retain some rights which may permit them to seize property, even after a discharge is granted. Spousal and child support obligations and most tax debts are not dischargeable.

- \* Within 15 days of the filing of a bankruptcy petition, schedules of the debtor's assets and liabilities must be filed. Failure to timely file the appropriate schedules will result in dismissal of the bankruptcy.

- \* If a case is not dismissed and a discharge is entered by the court, the debtor is prohibited from being granted another discharge in chapters 7 and 11 within eight years.

- \* Fraudulent information or acts by the debtor are grounds for denial of a discharge and may be punishable as a criminal offense.

- **How do I retrieve documents from a case already in Archives?**

To retrieve copies of documents from the National Archives and Records Administration, you must obtain (1) the case number, (2) accession number, (3) location and (4) the box number from the clerks office.

- **Who do I notify about a possible fraudulent filing?**

You should notify the trustee in the case and call or write to the Bankruptcy Administrators Office

- **Can creditors be added after the case is filed?**

Yes, you may amend any list, schedule or statement as a matter of course at any time before the case is closed. You must also give notice to the trustee and to any entity affected by the amendment. A fee will also apply, so it is best to insure that all creditors are listed when the case is commenced.

- **What is a 341 meeting?**

The meeting of creditors is a hearing all debtors must attend in any bankruptcy proceeding. It is held outside of the presence of the judge and usually occurs between 20 and 50 days after the filing of the petition. The trustee assigned to the case typically conducts the meeting. In some instances, the Bankruptcy Administrator will conduct the meeting.

The meeting permits the trustee, creditors and other interested parties to review the debtor's petition and schedules, and to ask questions regarding the estate. The debtor is required to answer questions under penalty of perjury (swearing or affirming to tell the truth) about the debtor's conduct, property, liabilities, financial condition, and any other matter that may affect the administration of the case or the debtor's right to discharge. In addition, the trustee or Bankruptcy Administrator will ask questions to ensure that the debtor understands the bankruptcy process.

The meeting is referred to as a “meeting of creditors” because creditors are notified that they may attend and ask the debtor questions pertaining to assets or any other matter pertinent to the administration of the case. It is also referred to as a “341 meeting” because it is mandated by Section 341 of the Bankruptcy Code. Creditors are not required to attend these meetings and do not waive any rights if they do not attend. The meeting usually lasts ten to fifteen minutes and may be continued if the trustee or Bankruptcy Administrator is not satisfied with the information presented.

If the debtor fails to appear and provide the information requested, the trustee or Bankruptcy Administrator may request that the case be dismissed, or seek other relief against the debtor for failure to cooperate.

- **What is a Certificate of Service?**

When you file a motion or pleading with the Court, you must file a written statement that you have mailed or delivered a copy of the motion to all interested parties. This is called a certificate of service. You must list the name and address of each person and attorney being served with the motion, and the name of the party each attorney represents, and you, your attorney, or an employee of your attorney must sign the certificate. It is very important to file a certificate of service with your pleadings. The Court may deny your relief if you do not file a certificate of service.

- **What if my case is dismissed?**

A dismissal order ends the case. The automatic stay is terminated, and, if a discharge has not been entered, creditors may take action to collect on their debts.

- **How do I know if a debt is secured, unsecured, priority so I can fill out my schedules correctly?**

**Secured Debt:** A secured debt is a debt that is backed by a mortgage, pledge of collateral, or other lien, including a properly recorded judgment lien. It is a debt for which the creditor has the right to pursue specific pledged property upon default. Typically, things like a car or a house are used as collateral to secure consumer loans.

**Unsecured Debt:** If you have simply promised to pay someone a sum of money at a particular time and have not pledged any property, it is an unsecured debt. This may include a judgment that is not secured by a lien.

**Priority Debt:** Section 507 of the Bankruptcy Code lists certain debts that are entitled to be paid ahead of most other unsecured debts. These are called priority debts. Examples of priority debts are some taxes, wage claims of employees, debts related to goods and services provided to a debtor’s estate during the bankruptcy case, and alimony, maintenance, or support or a spouse, former spouse, or child.

**Administrative Debt:** An administrative debt is a type of priority debt and arises when someone provides goods or services to the bankruptcy estate during the case. In some cases, attorney’s fees are an example of administrative debt, as are trustee’s fees and costs.

- **What are exemptions?**

The Bankruptcy Code allows an individual debtor to hold back from the bankruptcy process certain property. Such property is called an exempt asset. Exempt assets are protected by state law from distribution to creditors. Examples of exempt assets include vehicles up to a certain value, equity in a home up to a certain value, and tools of your trade. Exemptions must be claimed or lost and they are claimed on Schedule C. If no one objects to the claimed exemptions within a specified time, the assets may not be part of your bankruptcy estate.

Deciding which assets are exempt can be one of the more important and complex parts of your bankruptcy case often requiring legal judgment as to your particular circumstances. It is extremely important to consult an attorney if you have any questions. The failure to list all property in which an exemption may be claimed and to properly claim an exemption may result in the loss of the right to claim the exemption. It is extremely important to consult an attorney if you have any questions.

- **How can I get a case reopened?**

You may file a Motion to Reopen stating the grounds for reopening the case, and pay the appropriate filing fee in full. A filing fee is not required when the purpose of reopening the case is to enforce the discharge or to correct an administrative error. The Judge will determine whether to reopen the case and may hold a hearing.

- **What if I can't afford an attorney?**

If you cannot afford an attorney, contact the Alabama State Bar Association for assistance.

- **What is a discharge?**

A discharge order issued by the Court permanently prohibits creditors from taking action against a debtor personally to collect debts incurred before the filing of the bankruptcy petition. The discharge does not prevent secured creditors from seizing collateral if payments are not kept up. The discharge does not prevent collection of debts incurred after the filing of the bankruptcy. Some debts are not dischargeable, and some debts are not dischargeable under certain circumstances. If you have questions about your discharge, consult with an attorney.

Some examples of debts that may not be discharged include: certain taxes and fines, debts not listed in your bankruptcy, alimony, child maintenance or support, debts from willful and malicious injury to another, debts created through fraudulent conduct or by providing false information to a creditor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharge

**Debts That Are Discharged:**

The chapter 7 Discharge Order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

**Debts That Are Not Discharged:**

1. Debts for most taxes;
2. Debts that are in the nature of alimony, maintenance, or support;
3. Debts for most student loans;
4. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
5. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;
6. Some debts which were not properly listed by the debtor;
7. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
8. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

- **What is a Reaffirmation Agreement?**

A reaffirmation agreement is an agreement with a creditor by which a debtor becomes legally obligated to pay all or a portion of an otherwise dischargeable debt. Such an agreement must be filed within 60 days after the first date set for the meeting of creditors. A debtor who signs a reaffirmation agreement has 60 days after the agreement is filed, or until his discharge date, whichever occurs later, to change his mind. Debtors entering into a reaffirmation agreement without counsel representing them will need to attend a hearing before a judge to determine if the agreement will be valid. Since a reaffirmation agreement takes away some of the effectiveness of your discharge, you are strongly advised to consult legal counsel before agreeing to a reaffirmation of a debt.

- **What is a Motion for Relief From Stay?**

Under certain circumstances, a creditor or a party seeking to continue an action outside of the bankruptcy will file a motion for relief from stay. Typically, the creditor is seeking to foreclose on property, sell it and apply the proceeds to the debt in cases where there is no value in the property for the bankruptcy trustee to administer in excess of valid liens and claims of exemption. If a motion for relief from stay is filed in your case, you should contact a bankruptcy attorney. If you want to object to a motion for relief from stay, you must do so in writing by filing your objection with the Court on or before the objection date listed in the notice sent to you and appearing at the preliminary hearing scheduled in that notice. Do not simply appear on the hearing date to state your objection, because relief will be granted and the hearing will not be held unless an objection has been filed. If a motion for relief from stay is filed in your case, you should contact a bankruptcy attorney.

- **What if a creditor tries to collect money after I get a discharge?**

The best thing to do will depend upon the specific facts of your case. If you have questions, contact an attorney. Make sure the creditor is aware that you received a discharge by mailing a copy of the discharge order to the creditor.

In general, if a creditor does not cease collection efforts after you have provided notice of the discharge, or if the creditor has commenced legal proceedings against you, you likely will need the assistance of an attorney to enforce the protection to which you are entitled once you have a bankruptcy discharge.

- **What does it mean if a case is dismissed?**

\_\_\_\_\_ A dismissal order ends the case. Upon dismissal the "automatic stay" ends and creditors may start to collect debts, unless a discharge is entered before the dismissal and is not revoked. An order of dismissal itself will not free the debtor from any debt. Often, a case is dismissed when the debtor fails to do something he/she must do (such as show up for the creditors' meeting, answer the trustee's questions honestly, produce books and records the trustee requests), or if it is in the best interests of the creditors. Unless the debtor appeals the order or seeks reconsideration of the order within ten (10) days after entry of the order, the Clerk will automatically close the case.

- **What is a redemption?**

Redemption allows an individual debtor (not a partnership or a corporation) to keep tangible, personal property intended primarily for personal, family, or household use by paying the holder of a lien on the property the amount of the allowed secured claim on the property, which typically means the value of the property. Otherwise, in order to retain the property, the debtor would have to pay the entire amount of the secured creditor's debt, do a reaffirmation agreement and become legally obligated on the debt again. The property redeemed must be claimed as exempt or abandoned.

With redemption, a debtor can often get liens released on personal household possessions for much less than the underlying debt on those secured possessions. Unless the creditor consents to periodic payments, redemption must generally be made in one lump sum payment to the creditor. If the debtor and creditor agree to the redemption, just a consent order of redemption is required. If the redemption is opposed, a motion for redemption and a request for hearing should be filed.

- **What should I do if I cannot make my chapter 13 payment?**

If the debtor cannot make a chapter 13 payment on time according to the terms of the confirmed plan, the debtor should contact the trustee by phone and by letter advising the trustee of the problem and whether it is temporary or permanent. If it is a temporary problem and the payments can be made up, the debtor should advise the trustee of the time and manner in which the debtor will make up the payments. Significant changes in the debtor's circumstances may require that the plan be formally modified. If the problem is permanent and the debtor is no longer able to make payments to the plan, the trustee will request that the case be dismissed or converted to another chapter. The determination of whether to modify, dismiss or convert a case requires the same kind of analysis as is needed for the initial decision whether to file bankruptcy and under what chapter. Therefore, the debtor should seek counsel from a qualified bankruptcy attorney before attempting to make such a decision. If the debtor delays making a voluntary decision and cannot make the plan payments, the court may dismiss the case.

- **My ex-spouse has filed bankruptcy and listed me as a co-signer on a scheduled debt. What can I do? Does my divorce decree protect me?**

You should seek legal advice for a thorough explanation of your rights and obligations in this area as soon as you find out that your ex-spouse has filed a bankruptcy.

- **What is an Adversary Proceeding?**

An adversary proceeding is a lawsuit arising in or related to a particular bankruptcy case. It is commenced by filing a Complaint with the Court, and is given a separate case number.

An adversary proceeding is the bankruptcy court's version of a civil complaint to:

1. Recover money or property.
2. Determine the validity, priority, or extent of a lien or other interest in property.
3. Obtain approval pursuant to the sale of BOTH the interest of the estate AND of a co-owner in property.
4. Object to or revoke a discharge.
5. Revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan.
6. Determine the dischargeability of a debt.
7. Obtain an injunction or other equitable relief .
8. Subordinate any allowed claim or interest.
9. Obtain a declaratory judgment relating to any of the foregoing in points 1 through 8.
10. Determine a claim or cause of action removed pursuant to removal of claims related to bankruptcy cases

- **What can I do if a creditor keeps trying to collect money after I have filed bankruptcy?**

A creditor that continues to attempt to collect a debt after the bankruptcy is filed is in violation of the automatic stay. You should immediately notify the creditor in writing that you have filed bankruptcy, and provide them with either the case number and filing date or a copy of the petition that shows it was filed. If the creditor still continues to try to collect, the debtor may be entitled to take legal action against the creditor to obtain a specific order from the court prohibiting the creditor from taking further collection action and, if the creditor is willfully violating the automatic stay, the court can hold the creditor in contempt of court and punish the creditor by fine or incarceration. Any such legal action brought against the creditor will be complex and will normally require representation by a qualified bankruptcy attorney.

See also the Fair Debt Collection Practices Act 15 U.S.C. Section 1692c. which applies to collection agencies, and the Oregon Unlawful Debt Collection Practices Act ORS 646.639 which applies to original creditors.



## **THE FAIR CREDIT REPORTING ACT**

The Fair Credit Reporting Act, 6 U.S.C. section 605, is the law that controls credit reporting agencies. The law states that credit reporting agencies may not report a bankruptcy case on a person's credit report after ten years from the date the bankruptcy case is filed. Other bad credit information is removed after seven years. The larger credit reporting agencies belong to an organization called the Associated Credit Bureaus. The policy of the Associated Credit Bureau is to remove Chapter 11 and Chapter 13 cases from the credit report after seven years to encourage debtors to file under these chapters.

You may want to contact the Federal Trade Commission, Bureau of Consumer Protection, Education Division, Washington, D.C. 20580, or telephone them at (202) 326-2222 and request the publications "How to Dispute Credit Reporting Errors" and "Fair Credit Reporting".